IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 23 OF 2005

DIGAMBER V.SAWAL,MARGAO GOA. ....Appellant

Versus

SMT. ROSA FERNANDES,MARGAO GOA. ....Respondent

Mr. C. Mascarenhas, advocate for the appellant.
Mr. Sudesh Usgaokar with Ms. P. Kamat, advocates for the respondent.

Coram:- R. M. LODHA, J.

Date:- 22nd September, 2005

P.C.

Heard Mr. C. Mascarenhas, the learned counsel for the appellant and Mr. Sudesh Usgaokar, the learned counsel for the respondent.

I perused the impugned Order dated 31st August, 2004 and also took into consideration the documents handed in by the learned counsel by way of compilation.

It is not in dispute that prior to the present suit filed by the appellant (plaintiff) the respondent (defendant) filed the suit being Regular Civil Suit No.177/2002 against the plintiff's mother. In that suit, the Order of temporary injunction has been passed restraining the plaintiff's mother from interfering in the right and enjoyment of the present respondent's property in Chalta no.196 of P.T. sheet 260. In this backdrop, the claim of access road by the plaintiff in Chalta no.196 of P.T. sheet 260, prima facie, having not been established as was found by the trial Court cannot be faulted.

The learned counsel for the appellant referred to the averments in the plaint and submitted that since birth the plaintiff has been using the suit access road uninterruptedly and openly for the purposes of access to his house situated in Chalta No.196 of P.T. sheet 260. The learned counsel would submit that there is no other access road. This aspect has not been

accepted by the trial Court. Even from the documents (pg. 81 of the compilation) relied upon by the appellant which is a plan prepared by the consulting Civil Engineer engaged by the appellant for the site inspection it cannot be said that the plaintiff does not have any access other than the suit access.

The discretion exercised by the trial Court does not suffer from any error of law or fact.

The Appeal From Order does not deserve to be admitted.

Dismissed in limine.

R. M. LODHA, J.

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